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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,691	08/28/2003	David Maniaci	1273	6774

7590 10/05/2005
Law Offices of John D. Gugliotta, PE, Esq.
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Akron, OH 44308

EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/649,691	Applicant(s) MANIACI, DAVID	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because item 44 in Fig. 1 is not properly directed to any structure (most recent drawings filed 2/2/04). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 1 calls for "said partition elements forming an acute angle at said centerpoint at a base of said partition sidewall such that a first large compartment is formed at the acute angle between the partition elements and the outer flange," wherein it is unclear, based on the corresponding disclosure, how the two partition elements form an acute angle, and furthermore whether the angle is formed at the centerpoint of the base of the partition sidewall or formed between the partition elements and outer flange. Moreover, it is unclear if such an acute angle exists

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on the structure, based on the disclosed figures. In addition, claims 1, 3, and 5 call for the intersection to be "at the outer circumference of the plate the cup support rim," wherein it is unclear what "the plate the cup support rim" entails. Furthermore, claims 1, 3, and 5 call for "a cup retaining orifice formed within said plate support surface, wherein it is unclear and appears to be physically impossible for the orifice to be formed within the plate support surface, based on the disclosed figures. Appropriate correction is required.

3. Claims 1, 3, and 5 recite the limitation "...to intersect at the outer circumference of the plate the cup support rim." In addition, claims 2 and 6 call for the "said structural element." There is insufficient antecedent basis for this limitation in the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mann (US Des. 351316) in view of Caner (US Des. 242106) and Perlis et al. (US 5803305). With respect to claim 1, to the degree that the claim is understood, Mann discloses the following:

- A plate support surface having a peripheral edge (Fig. 1)

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- A stiffened, circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces (Fig. 2)
- An upwardly curving peripheral rim connecting between said plate support surface and said outer flange (Fig. 3)
- A pair of partition elements connected at a centerpoint of the plate support surface and radiating out to the outer flange, each partition element having a flat upper apex connecting to the circular outer flange at the flanges elevation (Fig. 1)
- The partition elements forming an acute angle at the centerpoint at a base of the partition sidewall such that a first large compartment is formed at the acute angle between the partition elements and the outer flange (Fig. 1)
- A cup retaining orifice formed within the plate support surface and positioned such as to intersect at the outer circumference of the plate the cup support rim (Fig. 1)
- A third partition element connecting the cup support rim with the flat upper apex of the other partition elements, the third partition element having a flat upper apex (Fig. 1)

However, Mann fails to teach the partition elements transitioning smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim, and the cup support rim being stiffened. Nonetheless, Caner teaches a compartmented plate having partition elements transitioning smoothly to the elevation of the plate support surface by a

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curving partition sidewall having a similar curvature with the upwardly curving peripheral rim (Fig. 1). Having smooth transitions to the elevation of the plate support surface provides radii, thereby significantly reducing stress concentrations. Furthermore, Perlis et al. teaches a cup holding plate having a stiffened cup support rim, as shown in Fig. 5, wherein the substantially flat, outwardly extending cup holder rim provides flexural strength. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to add smooth transitions from the partition elements to the plate support surface of Mann as taught by Caner, and furthermore a stiffened cup support rim as taught by Perlis et al. so as to significantly reduce stress concentrations and to provide additional flexural strength, respectively.

With respect to claim 2, to the degree that the claim is understood, Perlis et al. teaches constructing the container of plastic (Col. 5, Lines 10-16). Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brundage (US 3955672) in view of Caner (US Des. 242106) and Perlis et al. (US 5803305). With respect to claim 3, Brundage discloses, to the degree that the claims are understood, the following:

- A plate support surface having a peripheral edge

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- A stiffened circular outer flange rim circumscribing the entire plate support surface at an elevation above the plate support surfaces (Fig. 2)
- An upwardly curving peripheral rim connecting between said plate support surface and said outer flange (Fig. 1)
- A cup retaining orifice formed within the plate support surface and positioned such as to intersect at the outer circumference of the plate the cup support rim (Fig. 1)
- A single partition element bisecting the plate support surface through a centerpoint of the plate support surface between the outer flange, the partition having a flat upper apex, as shown in Fig. 1.

However, Brundage fails to teach the partition element transitioning smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim, and the cup support rim being stiffened. Nonetheless, Caner teaches a compartmented plate having partition elements transitioning smoothly to the elevation of the plate support surface by a curving partition sidewall having a similar curvature with the upwardly curving peripheral rim (Fig. 1). Having smooth transitions to the elevation of the plate support surface provides radii, thereby significantly reducing stress concentrations. Furthermore, Perlis et al. teaches a cup holding plate having a stiffened cup support rim, as shown in Fig. 5, wherein the substantially flat, outwardly extending cup holder rim provides flexural strength. Therefore, it would have been obvious to one of ordinary skill in the art at the

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time of invention to add smooth transitions from the partition elements to the plate support surface of Brundage as taught by Caner, and furthermore a stiffened cup support rim as taught by Perlis et al. so as to significantly reduce stress concentrations and to provide additional flexural strength, respectively.

With respect to claim 4, to the degree that the claim is understood, Perlis et al. teaches constructing the container of plastic (Col. 5, Lines 10-16). Furthermore, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

7. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brundage in view of Perlis et al. With respect to claim 5, Brundage discloses the claimed invention except for having a stiffened cup support rim. However, Perlis et al. teaches a cup holding plate having a stiffened cup support rim, as shown in Fig. 5, wherein the substantially flat, outwardly extending cup holder rim provides flexural strength. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to stiffen the cup support rim of Brundage as taught by Perlis et al. so as to provide additional flexural strength, respectively.

With respect to claim 6, to the degree that the claim is understood, Perlis et al. teaches constructing the container of plastic (Col. 5, Lines 10-16). Furthermore, it has been held to be within the general skill of a worker in the art to select a known material

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on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kleckauskas et al. (US D473427 S)

Xu (US 5947011)

Schwartz (US D473757 S)

Wiedmeyer et al. (US D499304 S)

Hong (US 3107027)

Harper (US 4461396)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWTh 8:30-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NATHAN J. NEWHOUSE
PRIMARY EXAMINER